

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

CHAD WILLIAM REED,)
)
)
Plaintiff,)
)
vs.) Case Number CIV-16-461-C
)
JASON BRYANT, et al.,)
)
)
Defendants.)

ORDER ADOPTING REPORT AND RECOMMENDATION

Plaintiff filed the present action pursuant to 42 U.S.C. § 1983. Consistent with the provisions of 28 U.S.C. § 636(b)(1)(B), this matter was referred to United States Magistrate Judge Gary M. Purcell. Judge Purcell entered a Supplemental Report and Recommendation (“R&R”) on July 2, 2018. Defendants have objected to the R&R.

Plaintiff filed his action alleging violation of his constitutional rights. Plaintiff’s claims center on the decision to terminate him from the religious diet program. This decision was made based on Plaintiff allegedly violating the policies related to that program. Plaintiff named as Defendants several individuals who he argues were involved in the decision to terminate him from the diet program.

In the R&R, Judge Purcell noted that to the extent Plaintiff sought monetary damages against Defendants in their official capacities, his claims were barred by the Eleventh Amendment. Additionally, Judge Purcell recommended Plaintiff’s state law constitutional claims (Counts 2, 4, and 6) and his First Amendment Claim (Count 8)

based on denial of access to the Courts be dismissed without prejudice. Judge Purcell recommended the remainder of Defendants' Motion to Dismiss be denied.

The Court has considered the R&R and Defendants' Objection thereto. Upon that review, the Court finds the R&R should be adopted in full. Defendants' arguments challenging the R&R and/or Plaintiff's Complaint fail to apply the appropriate standard. The present R&R examines the issues as challenged via a Motion to Dismiss. Thus, the question is whether Plaintiff has pleaded factual allegations in a manner that raises "a right to relief above a speculative level." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). Upon de novo review, the Court finds, as did Judge Purcell, that the Complaint meets this standard. Defendants' arguments to the contrary, including qualified immunity, do not challenge the sufficiency of the facts pleaded by Plaintiff. Rather, Defendants' argument asks the Court to view the facts as they wish them to be viewed. That is not the proper approach when resolving a Motion to Dismiss.

Accordingly, the Court adopts, in its entirety, the Supplemental Report and Recommendation of the Magistrate Judge (Dkt. No. 84). For the reasons set forth in the R&R and this Order, the Motion to Dismiss (Dkt. No. 79) is GRANTED as to Plaintiff's claims seeking monetary damages against Defendants in their official capacities, Plaintiff's state law constitutional claims (Counts 2, 4, and 6), and First Amendment claim (Count 8) based on an alleged violation of his right of access to

courts, and DENIED as to Plaintiff's First Amendment claims (Counts 1, 3, and 5) and Plaintiff's Fourteenth Amendment and RLUIPA claims challenging ODOC's zero-tolerance policy (Count 7). This matter is returned to Judge Purcell for further proceedings consistent with the original Order of Referral.

IT IS SO ORDERED this 11th day of October 2018.



ROBIN J. CAUTHRON
United States District Judge